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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,660	06/16/2000	Eric Teller	1148/015	2830
23861	7590	01/13/2006	EXAMINER	
METZ LEWIS, LLC 11 STANWIX STREET 18TH FLOOR PITTSBURGH, PA 15222			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/595,660	TELLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Natalie A. Pass	3626	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Natalie A. Pass. (3) Barry Friedman (Reg. No. 33695).  
 (2) John Monocello (Reg. No. 51022). (4) Joseph Thomas.

Date of Interview: 29 December 2005.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 104, in particular, and all of record in general.


Identification of prior art discussed: Brown300 and Amano, in particular, and all of record in general.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.


Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

  
 JOSEPH THOMAS  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 3600

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Discussion centered on the applicability of the teachings of the Brown300 and Amano references that had been applied in the Office Action rejecting the claim limitations. Applicant pointed out that the communication taking place in the Brown300 reference was only communication of an "index" and of generalized health content to the user. Applicant also noted that it appeared as if the Amano reference only measured one parameter, whereas Applicant's invention measured more than one parameter prior to the calculating step.

It was suggested that the claims would better differentiate over the applied art if the calculating steps were more clearly defined, as these changes would make the claimed limitations more narrow.

It was further pointed out to Applicant that any changes to claim language must be supported in the originally filed specification. It is requested that Applicant point to specific page and line numbers of the originally filed specification for support of any newly added limitations.

Examiner will reconsider the references in light of claim amendments made of record.



4 Smithfield Street  
11<sup>th</sup> Floor  
Pittsburgh, PA 15222  
USA  
P. 412.288.9901  
F. 412.288.9902  
www.bodymedia.com

FAX 571.273.6774

To: NATALIE PASS USPTO

From: JOHN MONOCELLO

Date: 12.20.2005

No. of Pages: 3 including Cover Sheet

If any portion of this fax is illegible, please call BodyMedia at 412.288.9901

PTOL-413A (09-04)  
Approved for use through 07/31/2006. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

## Applicant Initiated Interview Request Form 571.173.6774

Application No.: 09/595,660 First Named Applicant: ERIC TELLER  
Examiner: NATALIE PASS Art Unit: 3626 Status of Application: PENDING

### Tentative Participants:

(1) JOHN MANOCELLI (2) BARRY FRIEDMAN  
(3) JOSEPH THOMAS (4) NATALIE PASS

OUR REF: 1148/015

Proposed Date of Interview: 12.29.2005 Proposed Time: 2:00 (AM/PM) (PM)

### Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: \_\_\_\_\_

## Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>RES.</u>	<u>104, 124, 153, 157</u>	<u>Brown300</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>"</u>	<u>"</u>	<u>AMANO</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <u>AMENDMENT FOR APPEAL</u>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) _____			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☒ Continuation Sheet Attached

### Brief Description of Arguments to be Presented:

SEE CONTINUATION SHEET

An interview was conducted on the above-identified application on \_\_\_\_\_.

**NOTE:** This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

John A. Manocello  
Applicant/Applicant's Representative Signature

\_\_\_\_\_  
Examiner/SPE Signature

JOHN A. MANOCELLI  
Typed/Printed Name of Applicant or Representative

\_\_\_\_\_  
Registration Number, if applicable

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Continuation sheet:

It was previously agreed that the teachings of Brown300 do not apply, (see Interview Summary of May, 24 2005), yet Brown300 was a primary reference for the rejections.

Even if the teachings did apply, the combination of Brown300 and Amano 5,914,837 ("Amano") cannot make out a *prima facie* case of obviousness because Brown does not teach "communicating to a recipient", as admitted by the Examiner. The Examiner cited Amano for its teaching of "communicating to a recipient". But even if Amano communicated to a recipient, it does not "calculate quantitative status information ....from data indicative of said first and said second parameters..." emphasis added. Amano makes all calculations from only one parameter – pulse wave form. Amano teaches that second parameter (motion) is only used to determine whether and when the calculation is performed. (Col.7 and Col. 8). Therefore, the second parameter (motion) does not render a value that is used in the calculation. Necessarily, Amano does not teach calculation "from .... a first and second parameter" as claimed.

In the event that the Applicants and Examiner do not reach agreement, the Applicants will propose a minor amendment that will put the case in better condition for appeal.